

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1990

Legislative Document

No. 74

H.P. 53

House of Representatives, December 27, 1990

Reported by Representative FARNSWORTH for the Commission to Study Maine's Oil Spill Clean-up Preparedness pursuant to Public Law 1989, chapter 868.

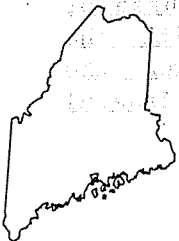
Reference to the Joint Standing Committee on Judiciary suggested and printing ordered under Joint Rule 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act Regarding Liability for Persons Responding to Oil Spills.



Be it enacted by the People of the State of Maine as follows:

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4 Sec. 1. 38 MRSA §542, sub-§§4-A, 5-A, 9-A and 9-B are enacted to read:

6 4-A. Federal contingency plan. "Federal contingency plan" means an area, regional or local contingency plan for oil spill response, prepared and published by the President of the United States under the Federal Water Pollution Control Act, 33 United States Code, Section 1321, as amended.

12 5-A. National contingency plan. "National contingency plan" means the national contingency plan for oil spill response prepared and published by the President of the United States under the Federal Water Pollution Control Act, 33 United States Code, Section 1321, as amended.

18 9-A. Responder. "Responder" means any person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of oil prohibited by section 543, or in preventing, containing, cleaning up, removing or disposing of, or in attempting to prevent, contain, clean up, remove or dispose of, any discharge of oil prohibited by section 543, except for any person who caused or is otherwise responsible for the actual or threatened discharge in the first instance.

26 9-B. State contingency plan. "State contingency plan" means a contingency plan for oil spill response, prepared and published by the commissioner in accordance with this subchapter.

30 Sec. 2. 38 MRSA §552, sub-§§3 and 4 are enacted to read:

32 3. Right of recovery by licensee. Any licensee that is held liable for the acts or omissions of any carrier destined for the licensee's facilities pursuant to subsection 1 may recover in a civil action from the carrier, or any person responsible for the acts or omissions of the carrier, all loss, expense, damage or other liability incurred by the licensee for the acts and omissions of the carrier.

40 4. Limited immunity for responders. Except for persons with immunity under chapter 14, and notwithstanding any other provision of law, the liability of any responder to a discharge of oil prohibited by section 543, or a substantial threat of a discharge, is governed by this section.

46 A. A responder is not subject to any civil liabilities or penalties for actions taken or omitted during the course of rendering care, assistance or advice consistent with the national contingency plan, a federal contingency plan, the state contingency plan or at the direction of the federal on-scene coordinator or the commissioner unless:

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(1) The responder is found guilty of gross negligence or willful misconduct, except that any responder guilty of gross negligence or willful misconduct is liable only to the extent that the actions taken or omitted by the responder increase the costs or damages resulting from the spill; or

(2) The claim is for bodily injury to or death of a person.

B. The exemption of a responder under paragraph A does not affect the liability of any other person liable for the damages arising from the discharge or from improperly executed response efforts.

STATEMENT OF FACT

This bill is proposed by the Commission to Study Maine's Oil Spill Clean-up Preparedness under Public Law 1989, chapter 868. There is a companion bill, "An Act to Extend the Commission to Study Maine's Oil Spill Clean-up Preparedness and to Improve Marine Oil Spill Prevention, Planning and Response."

The bill:

1. Defines certain terms and phrases;

2. Makes explicit the right of terminal operators to recover damages from a vessel that has spilled oil if the terminal ends up paying damages. Arguably, that right has previously existed implicitly in the law, but it is not entirely clear; and

3. Grants additional immunity to oil spill responders. Under the Maine Revised Statutes, Title 38, chapter 14, persons assisting in the cleanup of hazardous materials, including oil, who did not cause the discharge and who are not compensated for other than out-of-pocket expenses are exempted from liability except in cases of gross negligence or reckless, wanton or intentional misconduct. This bill extends similar immunity to oil spill responders who work for pay, provided that they are not responsible for the original spill and their actions are consistent with the appropriate federal or state contingency plan or with direction from the responsible federal or state official.